

MEMORANDUM OF LAW

DATE: March 26, 1993

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Special Death Benefit Procedure

In a memorandum dated March 3, 1993, you explained that Benjamin Chu was a sergeant with the San Diego Police Department and a safety member of the Retirement System who committed suicide. His widow recently filed an application for the Special Death Benefit provided for in San Diego Municipal Code ("SDMC") section 24.0705. The questions you pose related to this benefit and our respective responses are set forth below:

Question No. 1: The SDMC refers to the "Industrial Accident Commission" which no longer exists. I assume that the same body is now the Worker's Compensation Appeals Board. Is this correct?

Response: Yes. The Workman's Compensation Act was passed in 1913 and originally created a board of three members, known as the "Industrial Accident Commission," which later became a part of the "Department of Industrial Relations." In 1965, the Legislature reorganized the department, eliminating the Industrial Accident Commission and creating the Division of Industrial Accidents, with the duties of the old Commission divided between the office of the Administrative Director and the Worker's Compensation Appeals Board ("WCAB"). At that time, all the judicial powers formally within the province of the Industrial Accident Commission were transferred to the WCAB. (See, Stat. 1965, ch. 1513.)

Question No. 2: Does this mean that we require the applicant to file a case with Worker's Compensation?

Response: Yes. SDMC section 24.0705 states in pertinent part that: "A special death benefit is payable if the deceased was a safety member, if his death was industrial, as determined by the Industrial Accident Commission, using the same procedure as in workmen's compensation hearing" Of course, we cannot force an applicant to process a worker's compensation claim, however, the applicant is effectively required to do so in

order to qualify for the Special Death Benefit.

Question No. 3: It would appear from my reading of the SDMC that the finding of Worker's Compensation is binding on the Board. Is this correct?

Response: Yes. An applicant for the Special Death Benefit has the burden of establishing to the satisfaction of the Retirement System that a positive finding was rendered by the WCAB on the issue of whether the death was industrial. The only instance I can think of where the System might not be bound by a WCAB decision to award a death benefit is if the WCAB decision does not make any explicit or implicit findings on the critical issue of whether the injury was industrial. However, I think it is highly unlikely this would ever happen because in a WCAB proceeding for a death benefit, the applicant has the burden of showing that the death occurred "out of" and "in the course and scope of" employment. If these elements are satisfied, the death will be considered "industrial" and a death benefit will be awarded.

Question No. 4: If Worker's Compensation denies the claim, does the applicant have any appeal rights to the Board?

Response: No. If the WCAB claim is denied for any reason, the avenue of relief for the applicant is to petition the WCAB for a reconsideration of the matter, failing in that attempt, the applicant may then petition the superior court for relief by way of writ of mandate. If the applicant wants to appeal the Retirement System's determination to deny the Special Death Benefit, the avenue of relief is also by way of a writ of mandate in the superior court.

Question No. 5: Should we participate in the Worker's Compensation process in any way to insure that the decision reached is in a form applicable to the Board?

Response: An attorney from the Litigation Division of our office will represent the City at the WCAB hearing because the City has been named as a party defendant in that action. However, the Retirement System cannot participate in the proceeding. Although we have an interest in the outcome of the WCAB proceeding, we do not have an interest in the WCAB award, thus, the System lacks the legal standing to be joined as a party to the WCAB proceeding.

Do not hesitate to contact me if you need further clarification or have additional questions.

JOHN W. WITT, City Attorney

By

Richard A. Duvernay

Deputy City Attorney

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